

REMARKS

Claims 34-63 were presented for examination and claims 34-63 were rejected. Thus, claims 34-63 are currently pending in this application, of which claims 34 and 49 are independent. Applicants submit that claims 34-63 are in condition for allowance.

The following comments address all stated grounds of rejection. Applicants respectfully traverse all rejections and urge the Examiner to pass the claims to allowance in view of the remarks set forth below.

CLAIM REJECTIONS UNDER 35 U.S.C. §103**I. Claims 34-39, 45-54 and 60-63 Rejected Under 35 U.S.C. §103**

Claims 34-39, 45-54 and 60-63 are rejected under 35 U.S.C. §103 as unpatentable over U.S. Patent No. 6,360,270 to Cherkasova et al. (“Cherkasova”) in view of U.S. Patent No. 7,024. 477 to Allan (“Allan”). Claims 34 and 49 are independent claims. Claims 35-39 and 45-47 depend on and incorporate all the patentable subject matter of claim 34. Claims 50-54 and 60-63 depend on and incorporate all the patentable subject matter of claim 49. Applicants respectfully traverse this rejection and submit that Cherkasova in view of Allan fails to teach or suggest each and every feature of claims 34-39, 45-54 and 60-63.

A. Independent Claims 34 and 49 Patentable over Cherkasova and Allan

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. Independent claims 34 and 49 are directed towards a method and system claim respectively for maximizing throughput of a server while avoiding overload of the server. These independent claims recite an interface unit transmitting client

requests to a server to maintain performance of server throughput within a predetermined threshold range and intercepting a request from a client to open a transport layer connection with the server. The interface unit determines from monitoring responses to the client requests that the performance of the server throughput exceeds the predetermined threshold range. Applicants submit that neither Cherkasova nor Allan, alone or in combination, disclose, teach or suggest each and every element of the claimed invention.

In the claimed invention, an interface unit determines from monitoring responses to client requests that the performance of the server throughput exceeds the predetermined threshold range. As stated by the Examiner in the Office Action, Cherkasova fails to disclose, teach or suggest this feature of the claimed invention. The Examiner cites Allan for the purpose of suggesting that one ordinarily skilled in art might modify Cherkasova to determine from monitoring responses to the client requests that the performance of the server throughput exceeds a predetermined threshold range. However, as with Cherkasova, Allan fails to teach or suggest this feature of the claimed invention.

Instead of teaching or suggesting an interface unit monitoring responses to client requests to determine that the performance of the server throughput exceeds the predetermined threshold range, Allan describes a system to recognize all inline members of a container request and to produce a metric that states “the total time for the parent request and all of its inline content to be saved [sic] was ‘x’” (see col. 5, lines 25-28) As further stated by Allan, “it is not reasonable to assume that the web server that responds to the request for the container page is the same web server that will be asked to deliver all, or even, any of the inline elements of the page.” Thus, Allen is not directed to monitoring the performance of a server throughput exceeding a predetermined threshold. Rather, Allan is concerned with the total time a web page and all its

inline content is loaded from multiple servers. Allan monitors times to receive elements of a page from multiple servers, associates the times via a session id or cookie, and determines the total time to load the web page and its inline content from the multiple servers. As such, Allan does not monitor the throughput performance of each server but instead monitors the load time of a web page having inline elements served from different servers. Therefore, Allan fails to teach or suggest an interface unit determining from monitoring responses to client requests that the performance of the server throughput exceeds a predetermined threshold range.

Because Cherkasova and Allan, alone or in combination, fails to disclose, teach or suggest each and every element of the claimed invention, Applicants submit independent claims 34 and 49 are patentable and in condition for allowance. Claims 35-39 and 45-47 depend on and incorporate all the patentable limitations of claim 34, and claims 50-54 and 60-63 depend on and incorporate all the patentable limitations of claim 49. Therefore, Applicants also submit that claims 35-39, 45-47, 50-54 and 60-63 are patentable and in condition for allowance.

II. Rejection of Dependent Claims Under 35 U.S.C. §103

Claims 40, 41, 55 and 56 are rejected under 35 U.S.C. §103 as unpatentable over Cherkasova in view of Allan in further view of U.S. Patent No. 6,006,269 to Phaal (“Phaal”). Claims 42-44 and 57-59 are rejected under 35 U.S.C. §103 as unpatentable over Cherkasova in view of Allan in further view of U.S. Published Application No. US 2002/0120743 to Shabtay et al. (“Shabtay”). Claims 40-44 depend on and incorporate all the patentable subject matter of independent claim 34. Claims 55-59 depend on and incorporate all the patentable subject matter of independent claim 49. Applicants respectfully traverse this rejection and submit that

Cherkasova in view of Allan in further view of Phaal or Shabtay fails to teach or suggest each and every feature of claims 40-44 and 55-59.

For the reasons discussed above in connection with the rejection of independent claims 34 and 49, Applicants submit that independent claims 34 and 49 are patentable and in condition for allowance. Thus, claims dependent from claims 34 and 49 are patentable and in condition for allowance. As such, Applicants submit dependent claims 40-44 and 55-59 are patentable and in condition for allowance.

In the Office Action, the Examiner admits that Cherkasova and Allan fail to teach or suggest identifying a preferred client value for the request of the client and determining the position of the client request in the queue based on the preferred client value. The Examiner cites Phaal only to suggest one ordinarily skilled in the art might modify Cherkasova and Allan with priority requests as described by Phaal. The Examiner also admits that Cherkasova and Allan fail to teach or suggest pooling a plurality of transport layer connection or multiplexing client request via the pooled connections. The Examiner cites Shabtay only to suggest one ordinarily skilled in the art might modify Cherkasova and Allan to use a spliced connection described by Shabtay. However, as with Cherkasova and Allan, Phaal and Shabtay do not disclose, teach or suggest an interface unit determining from monitoring responses to client requests that the performance of the server throughput exceeds the predetermined threshold range. Therefore, Allan, Cherkasova, Phaal and Shabtay, alone or in combination, fail to teach or suggest each and every feature of the claimed invention.

Because Cherkasova and Allan in further view of Phaal and Shabtay fails to detract from the patentability of the claimed invention, Applicants submit dependent claims 40-44 and

55-59 are patentable and in condition for allowance. Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of claims 40-44 and 55-59 under 35 U.S.C. §103.

CONCLUSION

In light of the arguments discussed above, Applicants contend that each of the Examiners rejections has been adequately addressed and all of the pending claims are in condition for allowance. Accordingly, Applicants respectfully request allowance of all of the pending claims.

Should the Examiner feel that a telephone conference with Applicants' attorney would expedite prosecution of this application, the Examiner is urged to contact the Applicants' attorney at the telephone number identified below.

Respectfully submitted,

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